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HUMAN RIGHTS COMMITTEE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Second periodic reports of States parties due in 1988

Addendum

PERU*

[22 June 1992]

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* This document contains information submitted by the Government of Peru as a follow-up to the consideration of the second periodic report (CCPR/C/51/Add.4), which was begun at the 1133rd to 1136th meetings of the Committee, held on 31 March and 1 and 2 April 1992.

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Introduction

1. The Government of Peru hereby submits to the Human Rights Committee an addendum relating to the issues to be taken up in connection with the consideration of the second periodic report of Peru (CCPR/C/51/Add.4), in accordance with the decision taken by the Committee at its 1148th meeting, held in New York on 10 April 1992 during the forty-fourth session.

2. In accordance with its undertaking to provide an addendum to the report in question, dealing in more detail with the questions that aroused greater interest among members of the Committee, Peru is submitting this document as an indication of its Government's continuing concern with and profound interest in further efforts to promote and implement more effective application of the rights contained in the International Covenant on Civil and Political Rights and its Optional Protocol.

I. CONSTITUTIONAL AND LEGAL FRAMEWORK WITHIN WHICH THE COVENANT IS IMPLEMENTED, IN PARTICULAR DURING THE STATE OF EMERGENCY

Article 2, paragraphs 2 and 3, and article 4

3. As far as the functions, activities and hierarchy of the Peruvian legal system are concerned, under article 237 ff. of the Political Constitution of Peru, the authority to administer justice is exercised through the Judicial Power.

4. Under articles 28, 29, 30 ff. of Legislative Decree 767, the Organization of Justice Act, the organization of the Judicial Power is as follows:

(a) The Supreme Court of Justice of the Republic, whose jurisdiction extends over the whole of Peruvian territory. It is made up of 30 justices, distributed among specialized divisions: two for civil matters, two for criminal matters and one for constitutional and social law;

(b) The superior courts, which have civil, criminal, labour and agrarian divisions and specialized or mixed divisions. In Lima there are six civil divisions, 14 criminal, three labour and one agrarian;

(c) Courts specializing in civil, criminal, labour, agrarian and juvenile matters and mixed courts. In Lima there are 30 civil courts, 47 criminal, 18 labour, 3 agrarian and 10 juvenile;

(d) Professional magistrates' courts in various districts, which deal with civil, criminal and labour cases. There are magistrates' courts in every centre of population, whether rural or urban.

In addition, with a view to providing legal advice and publicizing and promoting the guarantees for the administration of justice laid down in the Constitution, particularly for the benefit of the more needy groups of the population, the Ministry of Justice is engaged in a nationwide programme to establish citizens' legal advice centres (annex no. 1).

5. As regards the basis for the declaration and maintenance of a state of emergency, according to article 231 (a) of the Political Constitution of Peru, a state of emergency may be declared in all or part of the territory in the event of a disturbance of the peace or public order, a disaster, or serious circumstances affecting the life of the nation. Such circumstances exist in our country, mainly owing to the magnitude of the terrorist phenomenon.

6. Futhermore, the same paragraph of article 231 of the Constitution allows for the possibility of extending states of emergency. There is thus no reason why that should not be done, since it is obvious that in Peru the threat to the life of the nation continues to exist. The state of emergency is being extended from necessity, and not arbitrarily, since the existence of illegal forces is overwhelmingly evident in Peru, as is the scale of the terrorist activities they engage in, often supported by drug traffickers, leaving a bloody trail of death and destruction, murders of civilian, political and military figures community leaders, trade unionists, and other persons, both Peruvian and foreign, together with the destruction of public and private property, which has become an everyday matter. The social and economic cost of terrorist violence is increasing from day to day.

7. It is worth bearing in mind what was said by the European Commission of Human Rights in the Lawless case, to the effect that the mere existence within a State of an illegal organization which refuses to recognize the legal authority of the elected Government and which recruits a clandestine military force and supplies it with arms represents up to a certain point a threat to the life of an organized democratic State. The Commission linked the declaration of a state of emergency to two factors: the existence of an illegal armed organization and a minimum of terrorist activity by that illegal organization.

8. With regard to the applicability and protection of human rights in states of emergency, when the armed forces assume control of internal order, on the orders of the President of the Republic, that does not imply that the Government Procurator's Department and the Judicial Power do not perform the judicial functions that fall to them under the Political Constitution of Peru. The legal system is maintained, with arrangements and procedures for independent investigation.

9. In accordance with article 4, paragraph 3, of the Covenant, Peru has notified declarations of states of emergency through the intermediary of the Secretary-General of the United Nations (annex 2).

10. With a view to maintaining unrestricted exercise of human rights, government procurators have been authorized by Legislative Decree 665 to enter police stations, prefectures, military installations and any other detention centre in the Republic in order to check the situation of persons who have been detained or have disappeared in areas covered by the state of emergency. Similarly, Ministerial Resolution 1072-91-IN/DM has ordered that in areas covered by the state of emergency the duty officers at police stations shall be responsible for giving government procurators direct assistance to enable them to perform their duties.

11. The Peruvian Government, conscious of the fact that a higher degree of respect for human rights can only be achieved through proper and continuing training and instruction of members of the armed forces and police, has passed Legislative Decree No. 752, requiring the armed forces' instruction centres to take account in their training programmes for officers of the part they have to play in the struggle against terrorism and the drug traffic, so as to make them qualified agents in the preservation of national security, the defence of human rights and the promotion of development.

12. In addition, the Ministry of Defence is acting along the same lines by setting up human rights offices in all the country's military districts for the purpose of instructing officers and non-commissioned officers in human rights. These offices also receive complaints about alleged violations of human rights committed by members of the armed forces, with a view to launching appropriate investigations and, if the complaints are justified, instituting judicial proceedings against those found to be responsible.

13. As far as the national police are concerned, the Government has passed Legislative Decree No. 744, establishing the Directorate of National Pacification and Defence of Human Rights.

14. Another measure along these lines was Ministerial Resolution No. 0629-91-IN/IG, which set up human rights offices as integral parts of prefectures, sub-prefectures, governorships and lieutenant-governorships, in accordance with Ministerial Resolution No. 0668-A-91-IN/DM, which sets up the Human Rights Committee of the Interior Sector. This system includes the Pacification and Human Rights Directorate of the national police and regional, subregional and provincial pacification and human rights offices.

15. It is to be noted that the Peruvian Government has ratified the 1977 Geneva Conventions and Additional Protocols in accordance with the Constitution, thus committing itself to authorizing visits by representatives of the Red Cross to civil and military detention centres so that they can perform their humanitarian work.

II. RIGHT TO LIFE, RECOGNITION AS A PERSON BEFORE THE LAW, LIBERTY AND SECURITY OF THE PERSON, PROHIBITION OF SLAVERY AND SERVITUDE, TREATMENT OF PRISONERS AND OTHER DETAINEES

Articles 6 to 11 and 16

16. It is a prime concern of the Peruvian Government to formulate and implement an appropriate prison policy that will establish and put into operation the system and regimes which will govern the running of prison establishments, particularly during the phase of penal execution. The Penal Code, the Code of Penal Procedure and the Code of Penal Execution all contain provisions on the process of decriminalization, which is conducted with due respect for the rights of the inmate, who enjoys the same rights as a citizen who is at liberty, without any limitations other than those imposed by law and by his sentence.

17. Mention should be made here of the Peruvian Government's initiative in passing Supreme Decree No. 017-90-JUS, which launched a more effective decriminalization policy by setting up the Special Pardons Review Board to promote a quicker and more efficient process of release from prison. Along the same lines, it set up the commission which will draw up the Regulations relating to the Code of Penal Execution so as to provide itself with the tools necessary for a better prison policy.

18. With regard to the classification of inmates of prison establishments, the authorities comply with the provisions of the Code of Penal Execution, which in articles 95 and 177 divides them into:

(a) Establishments for accused persons, intended for inmates remanded during the process of investigation and trial;

(b) Establishments for convicted prisoners, intended for inmates sentenced to deprivation of liberty;

(c) Establishments for women;

(d) Special establishments, where the emphasis is on care.

19. As far as minors are concerned, under article 20 of the Penal Code, persons under the age of 18 cannot be charged, that is, they are not liable to any penalty. However, under article 108 of the Minors Code, the following measures can be applied to them:

(a) Custody in their own home;

(b) Placement and treatment in another suitable home;

(c) Supervision in educational institutions;

(d) Specialist treatment in hospital;

(e) Supervision and treatment in a specialized establishment.

Under article 107 of the Minors Code, this last measure is applied to minors who have been abandoned or are in moral danger or who have committed unlawful acts and is carried out in establishments which are exclusively for minors. All measures and action taken with regard to juvenile offenders are taken within the limits laid down in articles 37 and 40 of the Convention on the Rights of the Child, which has been incorporated into Peruvian law with constitutional status by Legislative Resolution No. 25278.

III. RIGHT TO A FAIR TRIAL

Articles 14 and 15

20. With regard to suffrage restrictions on members of the armed forces, article 67 of the Political Constitution of Peru states that members of the armed forces and the police on active service may not vote or be elected, adding that other disabilities do not exist and cannot be created.

IV. FREEDOM OF MOVEMENT AND EXPULSION OF ALIENS, RIGHT TO PRIVACY, FREEDOM OF RELIGION, EXPRESSION, ASSEMBLY AND ASSOCIATION, AND RIGHT TO PARTICIPATE IN THE CONDUCT OF PUBLIC AFFAIRS

Articles 12, 13, 17 to 22 and 25

21. With regard to the organization and operation of the military courts, under article 282 of the Constitution of Peru the purpose of the military justice system is to try members of the armed forces and the national police for offences committed in the course of their duties under the terms of the Code of Military Justice, whose provisions are not applicable to civilians.

22. In peacetime, justice is administered by the following bodies: the Supreme Court of Justice of the Republic, the Supreme Council of Military Justice, the War Councils, the Superior Councils of Justice of the National Police and examining magistrates.

V. NON-DISCRIMINATION, EQUALITY OF THE SEXES BEFORE THE LAW AND PROTECTION OF FAMILY AND CHILDREN

Articles 2, paragraph 1, 3, 23, 24 and 26

23. The Convention on the Rights of the Child, which was incorporated into Peruvian legislation by Legislative Resolution No. 25278 of 3 August 1990, provides the legal framework within which the country conducts its national policy and prepares the national plan for children. This plan emphasizes preventive work among street children and social advancement work at the "family" level with municipal and work programmes.

24. As regards the sale of children, there has been no formal complaint concerning such traffic and the number of Peruvian children adopted by foreigners does not even amount to 0.1 per cent of Peru's child population. However, since the Government is anxious that any child adopted should be recognized as such in the country he goes to, it is in the process of signing bilateral agreements and giving effect to the Multilateral Convention on Inter-country Adoptions, which The Hague Conference on Private International Law is to sign at the beginning of next year.

VI. RIGHTS OF PERSONS BELONGING TO MINORITIES

Article 27

25. In Peru there is unrestricted respect for the rights of minority groups (ethnic, religious and linguistic minorities); the Political Constitution of Peru, for example, recognizes equality before the law without any discrimination on grounds of sex, race, religion, opinion or language (article 2, paragraph 2), also recognizing freedom of conscience and religion in individual or collective form. It also provides that there shall be no persecution because of ideas or beliefs. Public practice of all faiths is permitted as long as it does not offend morals or disturb public order.

26. The Constitution also recognizes that native peasant communities have legal existence and personality, stating among other things that they are

autonomous in their organization, communal work and use of land and in economic and administrative matters. There is thus wide-ranging national legislation protecting the rights of these minority groups, among which we may cite the following decrees and laws.

A. Decree-Law No. 22175, Law on Native Communities and Agrarian Development in the Forest and Adjacent Areas

27. This law recognizes the legal personality and existence of native communities, declaring also that they have ownership of their land which is not subject to seizure, prescription or alienation.

B. Law No. 24571, Recognition of Peaceful, Democratic and Independent Peasant Patrols

28. Through this law the State recognizes that peasant patrols are organizations which, duly accredited with the authorities, devote themselves to the service of the community in order to contribute to development and social peace, without party-political goals. The following are mentioned among their objectives: defence of their land, care of their livestock and property and cooperation with the authorities in eliminating crime.

C. Law No. 24656, General Law on Peasant Communities

29. This law declares comprehensive development of peasant communities to be a national necessity and a matter of social and cultural importance. Through this law the State guarantees such communities inviolability of their right of ownership of their territory, respect and protection for communal work directed towards restoring and maintaining goods and services and assistance with the organization and operation of communal and multi-communal enterprises and other forms of association. It also states that their lands are those indicated in the Law on Demarcation and Entitlement, which are not subject to prescription, alienation or seizure.

D. Law No. 24657, Law on Demarcation and Entitlement for the Territory of Peasant Communities

30. This law established the communal territory, stating that it included: the community's original land, land acquired under the ordinary law and under the agrarian law and land allocated for purposes of aggrarian reform.

E. Supreme Decree No. 012-88-IN, Regulations relating to Law No. 24571

31. This Supreme Decree regulates the organization and operation of the peasant patrols and the way they are to be set up, which will be by decision of the peasants. It also gives them legal personality and recognizes that they devote themselves to the service of the community.

32. With regard to the education and promotion of the culture of peasant and native communities and of the indigenous populations, the national policy for intercultural education and bilingual intercultural education for 1991-1995 and the policy for the education of indigenous populations in Peru guarantees these minority groups preferential treatment (see annex 3).

List of annexes*

* The Government of Peru has supplied these documents, which can be consulted in Spanish in the Secretariat's files.

Annex 1: Annual statistical table of citizen's legal advice centres in Lima and the provinces, January-December 1991

Annex 2: Summary table of supreme decrees declaring states of emergency in different departments, provinces and/or districts since 26 August 1990

Annex 3: National policy for intercultural education and bilingual intercultural education, 1991-1995

Projects and programmes for bilingual intercultural education in Peru

Education of indigenous populations in Peru

Annex 4: Statistics

(a) Infant mortality, 1991-1992

(b) Minors with behaviour problems cared for by the Family Welfare Institute, 1988-1991

(c) Mothers' clubs recognized by the direct assistance programme, 1988-1991

(d) Subsidized people's canteens and number of portions served, 1988-1992

(e) Basic housing services (percentage of access to housing)

(f) Staff employed in the public administration, 1988-1991

(g) Economically active population by levels of employment, 1980-1991

(h) Cases of AIDS recorded and reported

(i) Cases of cholera, 1991

(j) Economic cost of violence, 1980-1988

(k) Victims of political violence, May 1980-November 1989

(l) Numerical table of subversive incidents